

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

LESSIE ANDERSON,

PLAINTIFF,

-V-

9:04-CV-30
(NAM/DEP)

LOYCE DUKE, DEPT. SUPERINTENDENT OF
PROGRAMS; HERBERT McLAUGHLIN,
SUPERINTENDENT, HUDSON CORRECTIONAL
FACILITY; OSCAR McLAUGHLIN; REV.,
COORDINATING CHAPLAIN; D. THOMAS TESTO,
GRIEVANCE SUPERVISOR; AND WATCH
COMMANDER,

DEFENDANTS.

APPEARANCES:

Lessie Anderson
Plaintiff *pro se*

New York State Department of Law
Janice A. Dean, Esq.
The Capitol
Albany, New York 12224
Attorney for Defendants

Norman A. Mordue, Chief U.S. District Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiff, formerly an inmate in the custody of the New York State Department of Correctional Services ("DOCS"), brought this action under 42 U.S.C. § 1983, alleging that while he was incarcerated, defendants deprived him of his First Amendment right to free exercise of his religious beliefs. He also claims that, after he filed that an inmate grievance regarding the matter, prison officials improperly disclosed information regarding his grievance and conducted a hearing regarding the grievance in his absence.

Presently before the Court is a motion (Dkt. No. 31) by defendant Herbert McLaughlin to dismiss the amended complaint against him based on the lack of his personal involvement in the

constitutional violations alleged. The motion was referred to United States Magistrate Judge David E. Peebles for a Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.3(c).

In his Report and Recommendation (Dkt. No. 42), Magistrate Judge Peebles finds that, “even when generously construed in his favor,” plaintiff’s amended complaint (Dkt. No. 20) “fails to allege the moving defendant’s personal involvement in a cognizable, constitutional violation[.]” Accordingly, Magistrate Judge Peebles recommends that the motion be granted with leave to replead.

Plaintiff has interposed an objection (Dkt. No. 43). Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court conducts a *de novo* review of those parts of a magistrate judge’s Report and Recommendation to which a party specifically objects. Essentially, plaintiff’s objection addresses the merits of his claim against McLaughlin. These allegations may be asserted in a second amended complaint filed in accordance herewith.

It is therefore

ORDERED that the Report and Recommendation of United States Magistrate Judge David E. Peebles (Dkt. No. 42) is accepted and adopted; and it is further

ORDERED that the motion (Dkt. No. 31) by defendant Herbert McLaughlin to dismiss the amended complaint is granted with leave to replead; and it is further

ORDERED that if plaintiff chooses to replead his claims against defendant Herbert McLaughlin, he is directed to serve and file a second amended complaint on or before October 30, 2006.

IT IS SO ORDERED.

September 27, 2006
Syracuse, New York


Norman A. Mordue
Chief United States District Court Judge